IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal No.335 of 2007
In
Notice of Motion No.2130 of 2005
In
Suit No.2028 of 2005

Jethanand Bhagwandas Nagpal. .. Appellant (Org.Deft.No.3)

Vs.

Mr.Kishandas Bhagwandas Nagpal & Ors. .. Respondents

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Shri Sanjay Jain i/b IC Legal for the appellant.

Shri Percy Mody i/b N.C.Dalal & Co. for the respondent No.1.

Ms Deepali Bhalekar i/b Bilawall & Co. for the respondent No.6.

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CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ

DATED : 4TH JUNE, 2007

P.C.

1. Heard. The appellant challenges the order dated 9th March, 2007 passed in Notice of Motion No.2130 of 2005 in Suit No.2028 of 2005. By the impugned order, the appellant-original defendant No.3 was directed to furnish the accounts. The main contention on which the impugned order is sought to be

challenged is that the firm had already been dissolved long time back, and that therefore, the respondents could not have asked for the accounts of the dissolved firm and that too after the expiry of three years from the date of dissolution of the firm. The learned Single Judge, after considering all the materials on record, has held that the letter dated 31st May, 2005 addressed by the appellant himself discloses that though the document of dissolution was prepared long time back, actually the firm continued to be in existence on account of continuation of business and even offered the shares to the respondents in the amount to be received on surrender of tenancy in relation to the premises wherein the firm had been carrying on the business. Such offer was made by the respondents to the appellant and which fact discloses a clear admission on the part of the appellant about the business being carried out even after preparation of the document of dissolution disclosing the alleged dissolution of the firm. The said finding is clearly borne out from the record, and the letter dated 31st May, 2005 clearly discloses an admission on the part of the appellant in that regard. We, therefore, find that there is no case made out for interference in the impugned order.

2. It is pertinent to note that the impugned order also records that the advocate for the respondents/plaintiffs had volunteered not to press for the relief in the nature of direction of accounts at the stage where the impugned order was passed by reserving their right to take out a fresh notice of motion for the same relief if it is to be found necessary. However, the appellant insisted for hearing of the notice of motion and that is how the notice of motion was heard and disposed by the learned Single Judge. In the circumstances, the learned Single Judge also imposed the costs of Rs.25,000/- to be paid by the appellant to the respondents/plaintiffs.

3. When the appeal was heard, even the learned advocate for the respondents/plaintiffs reiterated that the respondents would not press for the relief in the nature of direction for accounts, at this stage, while reserving their right to take out a fresh notice of motion for seeking accounts as and when occasion arises. However, the learned advocate for the appellant, after taking instructions, did not agree to make any concession in that regard. As already observed above, since the impugned order is based on the materials on record, the finding regarding

admission on the part of the appellant about running of the business even after preparation of the deed of dissolution being clearly borne out from the record, we do not find any case being made out for interference in the impugned order, in this appeal. The question of bar of limitation does not arise as in the case in hand, once prima facie it is established that the firm continued to be in business, obviously it cannot be held that the firm was dissolved. Article 5 of the first division to the Schedule to the Limitation Act deals with the matter relating to the dissolved firms and not relating to the firms which continue to be in business activities.

4. For the reasons state above, therefore, there is no case made out for interference in the impugned order. The appeal, therefore, fails and is hereby dismissed.

(R.M.S.KHANDEPARKAR, J)

(D.G.KARNIK, J)